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EXTRAORDINARY

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GOVERNMENT OF INDIA

MINISTRY OF LAW

New Delhi, the 31st January, 1949

ORDINANCE No. V of 1949

AN

ORDINANCE

to provide, in pursuance of an agreement with Pakistan, for the recovery and restoration of abducted persons

WHEREAS an agreement has been reached between the Government of India and the Government of Pakistan for the recovery and restoration of abducted persons;

AND WHEREAS an emergency has arisen which makes it necessary to provide, in pursuance of the said agreement, for the recovery of abducted persons and for their temporary detention in camps pending restoration to their relatives;

AND WHEREAS the Governor of East Punjab and the Rulers of Patiala and the East Punjab States Union and the United State of Matsya have, under the provisions of sub-section (1) of section 106 of the Government of India Act, 1935 (26 Geo. 5, c. 2), accorded their previous consent to the making and promulgation of this Ordinance;

Now, THEREFORE, in exercise of the powers conferred by section 42 of the Government of India Act, 1935, the Governor-General is pleased to make and promulgate the following Ordinance:—

1. Short title, extent and commencement.—(1) This Ordinance may be called the Recovery of Abducted Persons Ordinance, 1949.

(2) It extends to the whole of India.

(3) It shall come into force at once in the Province of East Punjab and the Acceding States of Patiala and the East Punjab States Union and the United State of Matsya, and in any other Province or Acceding State on such date or dates as the Central Government, after obtaining the previous consent thereto of the Governor of the Province or the Ruler of the Acceding State, as the case may be, may, by notification in the official Gazette, appoint in this behalf.

2. Interpretation.—(1) In this Ordinance, unless there is anything repugnant in the subject or context,—

(a) "abducted person" means a male child under the age of sixteen years or a female of whatever age who is, or immediately before the 1st day of March, 1947, was a Muslim and who, on or after that day, has become separated from his or her family and is found to be living with or under the control of a non-Muslim individual or family;

(b) "camp" means any place established, or deemed to be established, under section 3 for the reception and detention of abducted persons.

(2) In the application of this Ordinance to any Acceding State,—

(a) references to the Province and the Provincial Government shall be construed as references to that Acceding State or the Government of that State, as the case may be, and references to the official Gazette shall be construed as references to the appropriate official publication of that State; and

(b) references to the Code of Criminal Procedure, 1898 (V of 1898) or any other law for the time being in force in the Provinces of India shall be construed as references to the corresponding law for the time being in force in that State.

3. Establishment of camps and notification thereof and of officers in charge.—(1) The Provincial Government may establish as many camps as it may consider necessary for the reception and detention of abducted persons, and any place established before the commencement of this Ordinance for the reception and detention of abducted persons shall be deemed to be a camp established by the Provincial Government within the meaning of this section.

(2) The Provincial Government shall, as soon after the commencement of this Ordinance as may be practicable, notify in the official Gazette all camps in the Province and the names of officers in charge thereof.

4. Powers of police officers to recover abducted persons.—(1) If any police officer, not below the rank of an Assistant Sub-Inspector or any other police officer specially authorised by the Provincial Government in this behalf, has reason to believe that an abducted person resides or is to be found in any place, he may, without warrant, enter and search the place and take into custody any person found therein who, in his opinion is an abducted person, and deliver or cause such person to be delivered to the custody of the officer in charge of the nearest camp with the least possible delay.

(2) In exercising any powers conferred by sub-section (1) any such police officer may take such steps and may require the assistance of such female persons as may, in his opinion, be necessary for the effective exercise of such power.

5. Maintenance of discipline in camp.—(1) The Provincial Government may make regulations for the transfer of abducted persons from one camp to another and for the maintenance of health and good order in the camp and of harmonious relations among the abducted persons detained therein.

(2) In making any regulations under this section, the Provincial Government may provide that a breach thereof shall be tried and punished by the officer in charge of the camp in such manner as may be prescribed in the regulations:

Provided that no abducted person shall be liable to be tried in a criminal Court in respect of any offence made punishable by any regulations made under this section.

6. Determination of question whether any person detained is an abducted person.—(1) If any question arises whether a person detained in a camp is an abducted person or not, it shall be referred to, and decided by, a tribunal constituted for the purpose by the Central Government.

(2) The decision of the tribunal constituted under sub-section (1) shall be final:

Provided that the Central Government may, either of its own motion or on the application of any party interested in the matter, review or revise any such decision.

7. Handing over of abducted persons to persons authorised.—(1) Any officer in charge of a camp may deliver any abducted person detained in the camp to the custody of such officer or authority as the Provincial Government may, by general or special order, specify in this behalf.

(2) Any officer or authority to whom the custody of any abducted person has been delivered under the provisions of sub-section (1) shall be entitled to receive and hold the person in custody and either restore such person to his or her relatives or convey such person out of India.

8. Detention in camp not to be questioned by Court.—Notwithstanding anything contained in any other law for the time being in force, the detention of any abducted person in a camp in accordance with the provisions of this Ordinance shall be lawful and shall not be called in question in any Court.

9. Protection of action under Ordinance.—No suit, prosecution or other legal proceeding whatsoever shall lie against the Central Government, the Provincial Government or any officer or authority for or in respect of any act which is in good faith done or intended to be done in pursuance of this Ordinance.

10. Validation of action taken before commencement of Ordinance.—Any order made or action taken before the commencement of this Ordinance by the Central Government, the Provincial Government or any officer or authority in relation to an abducted person, shall, in so far as the order made or action taken is of the nature permitted by or under this Ordinance, be deemed to be as valid and effectual for all purposes as if the order or action had been made or taken in the exercise of powers conferred by this Ordinance, and the provisions of section 9 in particular shall apply accordingly.

11. Termination of pending proceedings.—All proceedings for the production of any abducted person detained in a camp which are pending before a High Court under the provisions of section 491 of the Code of Criminal Procedure, 1898 (V of 1898) or before a Magistrate under the provisions of section 100 of that Code shall be deemed to have terminated on the commencement of this Ordinance.

12. Power to make rules.—(1) The Central Government may, by notification in the official Gazette, make rules to carry out the purposes of this Ordinance.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the constitution and procedure of any tribunal appointed under section 6;

(b) the manner in which any application to review or revise any decision of the tribunal may be made under section 6.

C. RAJAGOPALACHARI,

Governor-General

K. V. K. SUNDARAM,

Secy. to the Govt. of India.

